

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY SMITH,  
Petitioner,

v.

SPEARMAN,  
Respondent.

Case No. [20-cv-00322-SI](#)

**ORDER DENYING MOTION FOR  
INJUNCTIVE RELIEF AND MOTION  
TO STRIKE**

Re: Dkt. Nos. 24, 25

Respondent filed a motion to dismiss the petition for writ of habeas corpus as barred by the statute of limitations. The court determined that the motion had not adequately addressed the impact of a 2nd amended abstract in the file and dismissed the motion without prejudice to respondent filing a new motion to dismiss. Docket No. 18. That new motion to dismiss is due on March 19, 2021. Docket No. 26.

Petitioner has filed a motion for injunctive relief, requesting the court to direct prison officials to strike clauses on his burglary conviction and to release him from prison. The motion is extremely premature. The timeliness of the petition must be decided before the court reaches the merits of the petition. Only if the court determines the petition is timely and is meritorious would the time arrive to determine the sort of relief to which petitioner would be entitled. The motion for injunctive relief therefore is DENIED. Docket No. 24.

Petitioner has filed a motion to strike the upcoming motion to dismiss because he wants to be released from prison. As stated above, the court already has decided that respondent may file a new motion to dismiss. Petitioner's desire to be released from custody does not provide grounds to

1 strike that upcoming motion. Accordingly, petitioner's motion to strike is DENIED. Docket No.  
2 25.

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4 **IT IS SO ORDERED.**

5 Dated: February 12, 2021



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SUSAN ILLSTON  
United States District Judge